

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARL THOMAS ET AL.,

Case No. 11-12627

Plaintiffs,

HONORABLE ARTHUR J. TARNOW
SENIOR UNITED STATES DISTRICT JUDGE

v.

KARL HORVATH,

HONORABLE PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

Defendant.

**ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION [26] AND GRANTING PLAINTIFFS' MOTION
FOR APPROVAL OF HRT DISTRIBUTION OF ASSETS AFTER DISSOLUTION [11]**

Before the Court is the Magistrate Judge's Report and Recommendation [26] of July 20, 2012. The Report and Recommendation recommends that Plaintiffs' Motion for Approval of HRT Distribution of Assets After Dissolution [11] be granted. Defendant filed an Objection [27, 28] on July 3, 2012. Plaintiffs filed a Response [29] on August 10, 2012. Defendant filed a Reply [30] on August 16, 2012. For the reasons stated below, the Court adopts the conclusions in the Report and Recommendation [26] as its own.

I. STANDARD OF REVIEW

This Court reviews objections to a Magistrate Judge's Report and Recommendation *de novo*. 28 U.S.C. § 636(b)(1)(C).

I. DEFENDANT'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

In his objection, Defendant objects to the Magistrate Judge's conclusion that the default judgment in this case does not constitute an admission of the facts alleged in the complaint. Df.'s Obj. at 4. However, "[a]n allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied." FED. R. CIV. P. 8(b)(6).

Plaintiffs sufficiently pleaded defendant's ownership interest to be 4.87%, so by his default and the subsequent default judgment defendant is barred from contesting that fact.

Secondly, Defendant objects that the proposed distribution of proceeds violates the terms of the HRT Partnership Agreement. Df.'s Obj. at 5. Defendant's Objection [27] is the first time he raises this argument, therefore it is an improper objection. FED. R. CIV. P. 72(b).

Finally, Defendant objects to the manner in which the underlying property is to be sold. Df.'s Obj. at 6. However, defendant merely repeats arguments that the Magistrate Judge directly addressed in the Report and Recommendation [26] and found to be unsupported by both law and facts. The Court agrees with the Report and Recommendation's conclusion that the property may be sold to Plaintiff Thomas for \$132,000.00.

II. CONCLUSION

Based on the foregoing analysis, the Court hereby adopts the Report and Recommendation [39]. Accordingly,

IT IS ORDERED that the Report and Recommendation [26] of the Magistrate Judge is hereby **ADOPTED**.

IT IS FURTHER ORDERED that Defendant's Objection is **OVERRULED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Approval of HRT Distribution of Assets after Dissolution [11] is **GRANTED**.

SO ORDERED.

Dated: September 20, 2012

s/Arthur J. Tarnow
ARTHUR J. TARNOW
SENIOR U.S. DISTRICT JUDGE